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# **Mnemonic legality: militarism, masculinity, and the elasticity of belonging**

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## **Synopsis**

*This paper adopts the idea that nationally observed commemorative events are pivotal in the enactment of identity. Exemplified by Anzac Day, collective mnemonic narratives are implicated in the process of producing particular conceptions of what is normative and valued within a legal and political community. The notion of collective memory's contribution to the production of normative and formative frames, and associated senses of belonging and recognition, is brought into conversation with the theorisation of the plurality of law. Interview data from a project examining the experiences of expatriate homosexual Australian men is introduced in order to explore the entanglement of Anzac Day commemoration and law in the elastic quality of normative frames to tolerate difference while also being inherently exclusionary.*

## **Introduction**

This paper argues that collective memory plays an important role in mediating senses people have of law, lawfulness, and legality, and can be identified as an actor implicated in the process by which law comes to take on particular functions and meanings in society. As such, it can be thought of as a quasi-legal institution.<sup>1</sup> Collective memory, as

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<sup>1</sup> This follows Levine and Mellema (2001), who argue that experiences of law rely, too, on norms and forces which can be considered extra-legal or quasi-legal. Collective memory is rendered here as an 'institution'

one site at which normativity is enacted, contributes to the processes of meaning-making that structures the inclusions and exclusions of the law. In order to establish this argument, this paper builds on literature that identifies the law's processual, plural, and distributed character(s),<sup>2</sup> thus rationalising an appreciation of the legal and political textures of institutions which may, hitherto, have been considered non-legal. Moreover, this literature feeds into, and is fed by, an impression of law as an ongoing product of affective relations.<sup>3</sup> In other words, under investigation here is the power of collective memory, as an affective and emotionally textured practice, to contribute to the production of normative and formative frames<sup>4</sup> and senses of legality and belonging.

The argument that this process of meaning-making—and law's ability to construct or sustain a particular order or be recognised as operable—incorporates the role of collective memory, and its normalising and formalising function, has three interwoven threads which are developed throughout the paper. First, law and regulatory practices enable the conditions in which a mnemonic narrative is established. They contribute to the conditions of normativity that come to define and buttress the sense of a plural self: a collective 'we'.<sup>5</sup> For instance, the officially sanctioned silencing of homosexuality from the armed forces has a significant impact on the way the history of Australian military history is remembered. Second, law itself depends for its success and justification on social and moral attitudes<sup>6</sup> which can be contingent on, and bound up in, the formation and maintenance of collective memory. This particular point underscores the work that

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to convey the regularised and established practice of particular mnemonhistorical narratives as being a key feature of a group identity.

<sup>2</sup> Melissaris (2009), Davies (2017).

<sup>3</sup> See eg Philippopoulos-Mihalopoulos (2015).

<sup>4</sup> See eg Assmann (2011).

<sup>5</sup> Lindahl (2010).

<sup>6</sup> Hertogh (2018).

needs to be done, and continually redone, 'alongside' the law. Such work is readily identifiable in the social, rhetorical, economic, and political milieus which normalise, and help stimulate popular support for legislative and policy assaults on, for example, welfare, immigration, and foreign aid.

Equally, this work is needed for progressive legal reform, too; without critically engaging with the features of these quasi-legal institutions which sustain a legal and political orthodoxy, they remain complicit in the process of remaking the approved paradigm. This feeds into the third thread, that the emotive, affective, and sensorial aspects of law are identifiable among quasi-legal institutions which can contribute to the making or unmaking of belonging. Following Roberto Esposito's notion that community, or senses of obligation through community attachment, is a condition of law,<sup>7</sup> and the notion that communities are 'ready-made outlets for prejudice and excessive emotionalism,'<sup>8</sup> identifying the quasi-legal institutions and actors bound up in this emotive process of community-making is a task of legal significance.

This paper suggests that the commemoration of Anzac Day is identified as one such quasi-legal institution, affecting the way in which law is given meaning for different people in society. Anzac Day is a commemorative event implicated in the construction of a sense of national identity in Australia as well as constituting a deeply exclusionary narrative, entangled in the representation of an idealised Australian as a tough, militarised, heterosexual, masculine, white male. In this paper, I focus on the exclusion of homosexuality from this normative register. While others have shown how the narrative

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<sup>7</sup> Esposito (2013).

<sup>8</sup> Blackshaw (2010), p.21.

frame of Anzac Day can alter law's understanding of such things as homophobic violence,<sup>9</sup> I draw on the meaning of Anzac Day through interviews with seven homosexual Australian men, aiming to show the role an institution such as the commemoration of Anzac Day can play in enacting legal meaning. In focusing on Anzac Day, the interviews consider the deeply masculine evolution of Australian nationalism,<sup>10</sup> steeped as it is in early 20<sup>th</sup> century conflict, with the Australian men who fought revered as the typification of Australian-ness.<sup>11</sup> The sense-making nature of the interviews has presented data which help demonstrate the characterisation of law as dependent on quasi-legal institutions and illustrate the elastic quality of both 'progressive' legislation<sup>12</sup> and non-state law foundations of norm, order, and belonging.

### **Belonging beyond the law**

The idea that what can be thought of as the operation of law extends well beyond the formal and privileged understanding of 'the law' and legal decision has enabled us to readily move beyond seeing law (only) as a centralised, organised, and coherent body of rules. Ranging from understanding law as constituted by, and reliant on, a variety of social practices and actors<sup>13</sup> to recognising discrete ways in which legal mechanisms impact upon both complex and mundane social interactions<sup>14</sup> opens up the possibility of

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<sup>9</sup> Philadelphoff-Puren and Rush (2003).

<sup>10</sup> Despite the Anzac legend encompassing both Australia *and* New Zealand, the focus of this paper is solely on Australia; the observance of, and attitudes towards, Anzac Day in each country is tempered by specific social and political conditions, both contemporary and at the time.

<sup>11</sup> Damousi & Lake (1995a).

<sup>12</sup> Broadly within this century and the final quarter of the last century, Australia has enacted a range of legislation, both federally and by state, extending rights and recognition to its LGBT population. Notwithstanding decriminalisation and criminal justice provisions, this legislation has tended to cover family life, concerning succession, adoption, family planning, and marriage & partnership recognition, reaffirming normative and generative relationship logics.

<sup>13</sup> Ewick & Silbey (1998).

<sup>14</sup> Valverde (2012).

convincingly tracing the legal effects of institutions which are ostensibly non-legal.<sup>15</sup> One critical extension to this idea is the notion that the formal institution of 'law' and legal decision making can conceal pervasive inequalities, obscured as they are by the ongoing fallacy that law is fairly modelled on detachment and neutrality. While it is true that law's own appeal to convince us of its universality sees it no longer *formally* expressing gender, race, sexuality, and class distinctions, the perceived singularity and self-contained logic of law is, in fact, embedded in a multitude of practices which result in the production of a normative standard on which the law rests. This standard is defined, according to Margaret Davies, as 'a convergence of behaviour, of discourse, of meaning, symbolisations, or of actions, which exerts a gravitational pull on surrounding events and meanings, and is often read into them as an unquestioned presumption.'<sup>16</sup>

In other words, mainstream state-based law not only derives 'from plural sources [and] relies upon plural modes of reasoning' but 'interacts in complex and contradictory ways with a plurality of social, ideological and political systems of significance.'<sup>17</sup> We are, instinctively, aware of this; if the law was hierarchical, vertically effective, and clearly centred, then the morality and virtue of law(s) would be self-defining. However, 'the law' is made in a constant process whereby it oscillates between, on the one hand, being heavily contingent on the distributed contest for defining *a* norm in which it can successfully be situated and, on the other hand, itself contributing to this (re)definition and being instrumental in formalising this norm as 'the law' within the confines of its own

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<sup>15</sup> Fleur Johns (2013) identifies various taxonomies of non-legal; it is defined as illegal, extra-legal, pre- or post-legal, supra- or infra-legal. Each of these suggest a definite distinction from law. The 'ostensibly' non-legal institutions I am referring to in this paper, particularly in relation to mnemonic institutions, can more appropriately be considered quasi-legal to reflect how closely bound up these institutions are in the process of making legal order.

<sup>16</sup> Davies (2017), p.37.

<sup>17</sup> Davies (2005), p.92.

legal rationality. In the context of marriage equality, for instance, the law's framing is not in and of itself successful but is responsive to the distributed network of other actors, events, and institutions which have identified this as socially tolerable. However, law is similarly complicit in determining the limits of the inclusion of hitherto excluded conduct within its boundaries, providing for the state recognition of relationships which fit within the pre-existing marriage paradigm and/or capturing those who are not otherwise compelled by this sole conceptualisation of marriage because it is the limit of the legal recognition being offered.<sup>18</sup>

This is an example of the elasticity of legal belonging. While such elasticity cannot be spatialised as a pulling from a fixed focal point, given the distributedness of institutions and sites at which normativity is contested and enacted, it articulates an inevitable limit to law's tolerance (or ability) to capture deviations from its previous standards. Similarly, there is an inevitable limit to social tolerance of deviations from what has previously been considered 'normal' within the social order which, in this instance, is evidenced in no small part by how substantial the minority 'No' vote was and how rancorous the marriage equality postal survey was. In relation to law, Hans Lindahl would suggest that the limits of its tolerance is an inescapable feature, that there may well be something—the a-legal—which 'demands the actualization of practical possibilities that are impossible with the range of possibilities available to a collective [legal order] as its possibilities.'<sup>19</sup>

In other words, its inability to conceptualise that which exists beyond the purview of its own in/out, legal/illegal distinction means the law is continually having to develop to

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<sup>18</sup> Duggan (2003), Ammaturo (2014).

<sup>19</sup> Lindahl (2013), p.6.

incorporate and recognise that which it previously did not, or could not, conceptualise; this is a slow, iterative process by which law responds to plural social and political orders and norms. The idea that ‘the interference wrought by a-legality is not *eo ipse* an existential threat to a legal collective’<sup>20</sup> highlights that the contest for actualising a-legal claims does not necessarily destabilise the legal order but, as this paper argues, can proliferate, and be determined, within quasi-legal institutions.

The notion of legal plurality, beyond ‘the law’, rests on expansive and uninhibited approaches which enable legality to be read into social encounter.<sup>21</sup> Underpinning such approaches is a concern with mapping how everyday conditions produce and have an effect on our lives. One such approach is the insistence that language is not imbued with a logic independent from material form; rather, each has permeable frontiers and are related by way of ascription and affect.<sup>22</sup> Opening up legal theory to acknowledge law’s contingency on the litany of non-textual actors invites us to understand that law thrives, and emerges, in an assortment of institutions, events, encounters, emotional connections, and situations. The idea of law as atmosphere, and the “‘perfect” dissimulation’ which nourishes our desires, creates frames of belonging, and ‘feeds our ways of living and ends up determining the human’<sup>23</sup> is, in many ways, a reconfiguration of the notion of obligations which are bestowed upon us by the juridical order.

Andreas Philippopoulos-Mihalopoulos’ thesis is that the notion of a juridical order expressing such ‘obligations’ is better expressed as a collection of diffuse practices,

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<sup>20</sup> Lindahl (2013), p.179.

<sup>21</sup> See eg Cowan & Carr (2016).

<sup>22</sup> Keane (2005), Conaghan (2013)

<sup>23</sup> Philippopoulos-Mihalopoulos (2015), p.107.



concealed in the ordinary and affective matter we encounter during our everyday lives, which effects normative compulsions, rather than obligations. While it is important to account for this distributed and ever-present feature of the juridical order, as one feature of the cyclical process it is important to still account for the complicity of what is readily and commonly understood as 'the law' as part of this process, with its own peremptory quality. As such, Lindahl's distinction between the legal order and political plurality is useful to reintroduce here, as it enables obligation and normative compulsion to be dissociated from one another, while letting both retain importance. However, reading Davies and Philippopoulos-Mihalopoulos together acts as a useful reminder to be cognisant of quasi-legal techniques which are implicated in the process of norm- and law-making. Indeed, this paper argues that memory should be accounted for in this, as it acts as a device which helps characterise lawfulness, normalcy, 'right', and belonging.

Devyani Prabhat acknowledges the importance of this when she suggests that emotionality and the personal experience of law are often absent from the analysis. Writing in relation to the field of migration and nationality laws, she states that hearing personal accounts, and emphasising the emotional textures of law, helps us to more readily understand concepts such as our senses of belonging and consciousness of law because 'the complexities are about the emotive component of people's loves rather than merely their physical dislocations.'<sup>24</sup> Beyond the concrete and readily accessible moments of formal recognition and the legal *decision* to, for example, grant citizenship, is the ongoing, and messily constructed, quasi-legal *determination* of belonging, through the feelings of comfort and positive perception, on the one hand, and the converse, on the

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<sup>24</sup> Prabhat (2018), p.29.

other. The distinction one can make between decision and determination, while acknowledging their shared importance and that they interweave, follows the distinction between obligation and normative compulsion.

There are, of course, three determinations that can be accounted for which render state legality and legal *decision* either meaningful or meaningless. The following are each characteristic of the notion that 'official state law is in constant competition with normative frameworks and rules of non-state law'.<sup>25</sup> First, the determination that, in conjunction with or notwithstanding 'the law', I sense that I (do not) belong. Second, and similarly dissociable from 'the law', I sense that others believe I (do not) belong. Third, others feel I (do not) belong. In other words, senses of (un)belonging which are mediated by normative frameworks can be inconsistent with the apparent definitiveness of more progressive and inclusive state law. Each of the above motifs appears within the data generated from sense-making and reflective interviews, touching on the role of collective memory as one of these normative frameworks and a source of non-state law, which this paper articulates as a quasi-legal institution, in helping foster a sense of belonging and buttress particular societal norms.

The relationship between law and memory has, in recent years, been closely examined.<sup>26</sup> However, the focus of much of this literature has, principally, been on examining the role law plays in the determination of memory. This literature extends from identifying legal concepts, actions, and institutions as determinative resources of remembering and forgetting<sup>27</sup> to identifying the important role played by the law in the formal

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<sup>25</sup> Hertogh (2018), p.180.

<sup>26</sup> Karstedt (2009); Belavusau & Gliszczynska-Grabias (2017).

<sup>27</sup> Christodolidis & Veitch (2009).

consolidation and functionalisation of memory.<sup>28</sup> But a further insight can be obtained by acknowledging that collective memory narratives can be implicated in the processes of community-making upon which the law is founded. Attending to the experience of individuals in relation to these narratives of commemoration can shed light on the gap separating formal legal developments, such as the progressive narrative of greater inclusion in the law, from the real mechanisms which determine one's relationship to community, one's effective belonging or not to a political body and thus the symbolic place one has before the law. The implication of memory in the process of making sense of one's place in a particular social and political environment is a consistent theme within the interviews in this study and gives an indication of the significance of quasi-legal institutions that can emerge around such things as the commemoration of Anzac Day.

## **Method**

The interviews, conducted separately with seven participants, were led by a single question that was asked of all participants: how do you make sense of Anzac Day? Beyond this, the interviews were unstructured and there was minimal intervention from the interviewer.<sup>29</sup> Participants were encouraged to take time to reflect on personal experience and vocalise the process by which insights emerged in response to the initial question. Arising out of the process by which participants made sense of their personal experiences were reflections on where and how belonging, identity formation, and law featured. Such an approach, which encourages participant sense-making, reflects the exploration of perceptions of belonging and consciousness of law, and operates within

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<sup>28</sup> Löytömäki (2012).

<sup>29</sup> This method is based heavily on principles found within the approach taken to interviews in interpretative phenomenological analysis. See eg Smith (2004); Smith, Flowers, & Larkin (2009); Smith & Osborn (2008).

the socio-legal insistence on exploring the extra- and quasi-legal sources of normativity and law. A method which offers means by which people can reflect on the processes of identity formation, belonging, citizenship, and community,<sup>30</sup> is a necessarily inductive process, and the intention of this work is to ‘construct broader research questions which lead to the collection of expansive data’<sup>31</sup> and prompt additional inquiry.<sup>32</sup> As such, the purpose of the interviews, and this paper, is to suggest a number of themes, factors, and experiences which can come to constitute law or render it perceptible, within the theoretical positioning of law as open and pervasive.

The idiographic features of the interviews conducted—ie with a small number of participants with a high degree of sample homogeneity—feeds into the exploratory steps this study can take, addressing the detail of individual cases which means we *may*, tentatively, be able to indicate a degree of commonality in the way law and senses of belonging within a community are manifested. The small sample size also enables close consideration of the themes introduced within each individual’s narrative. Each of the interviewees were Australian members of gay-inclusive rugby teams in the UK. Those participating were young-middle-aged, gay, ex-patriate, Australian, men. While expatriates may approach issues of identity and belonging in different ways than residents of Australia, limiting the study in this way offers a unique perspective. It guaranteed a degree of distance of participants, both spatially and temporally, from formative years in Australia. It also enabled a more reflective tone to be struck in the participants’ recording of their own experiences and development. While these reflections cannot be generalisable, the way in which they contemplatively address Anzac

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<sup>30</sup> See eg Mulveen & Hepworth (2006); Munroe, Hammond, & Cole (2016).

<sup>31</sup> Smith (2004), p.43.

<sup>32</sup> Rather than the pursuit of closure of satisfaction of a particular assumption. Smith & Osborn (2008).

Day and their sexuality within their accounts prompts a tentative mapping of belonging. Incidentally, the fact that each were rugby players feeds into the interrogation of the complex relationship between sexuality and gender stereotypes in Australia; how this is bound up in the commemoration of Anzac Day and the valorisation of masculinity and gender stereotypes; and the entanglement of law in this process.

## **Analysis**

Each of the participants, in one way or another, addressed Anzac Day as being of fundamental importance. This is, perhaps, unsurprising, given the fact that the Anzac legend—for Australians, at least—revolves around the suggestion that the landing of Australian troops at Gallipoli on the morning of 25<sup>th</sup> April 1915 heralded the entrenchment of a sense of Australian-ness and the birth of the Australian nation (or, at least, the coming of age of Australia as a nation on the international stage). Moreover, public commemorative events are often considered to have a constitutive function, acting as a means of enabling communities to orient themselves around common, standardising features.<sup>33</sup> The emotional quality of collective memories facilitates a normative claim about heritage to be emulated;<sup>34</sup> obligations to be satisfied;<sup>35</sup> and a linear trajectory to be imagined from the past, through the present, and into future projections.<sup>36</sup> As such, collective memory is entangled in the process of boundary making, identity formation, and the framing of belonging.<sup>37</sup>

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<sup>33</sup> Carter & Sealey (2007).

<sup>34</sup> Olick & Robbins (1998).

<sup>35</sup> Assmann (2011).

<sup>36</sup> Reif-Hüsler (2012); Schwarz (2012).

<sup>37</sup> McCormack (2011); Assmann & Shortt (2012); Moreton-Robinson (2015); Abazi & Doja (2018).

In this respect, Anzac Day is deeply implanted in the legal and political consciousness of Australians.<sup>38</sup> Indeed, one participant, Zackary,<sup>39</sup> volunteered a great deal of embarrassment that he was not as well-versed on the legend as he should have been 'because it's supposed to be such a, a revered sort of day for our culture.' Another participant, Owen, queried what he could bring to the project when considering whether to participate for the same reason. In general, three interviewees talk about the profound collective importance of Anzac Day, another talked about its deep personal importance, and one was more equivocal but acknowledged its importance to the community. Ben reflects that:

I think a lot of people do have a connection to Anzac in the way that they teach it to you and it's very, you know, this is Australia. This is what we did. This is who we were helping out. So, I think it's, yeah, a lot of- just about national pride probably, and knowing, yeah, knowing that you're part of the country and your family contributed to that.

This reflects the importance of a sense of familial lineage within a narrative of shared significance which is, of course, deeply exclusionary to immigrant Australians (which is perhaps why the two interviewees who gave a much clearer account of their non-white, first- and second-generation immigrant status were less effusive about the importance of Anzac Day to *them*). Moreover, the narrative is deeply racialised: the stress on the Anzac role in, as Clark says, 'stand[ing] up for their right to, one, freedom, but freedom from authoritarianism' is, as Owen suggests, presented in school as, broadly, 'we shouldn't be

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<sup>38</sup> See eg Lake (2010); Daley (2018).

<sup>39</sup> All interviewees names have been anonymised.

taking anything for granted [ . . . ] it w-, c-, would have been a very different country had the Japanese taken over part of it.<sup>40</sup> The interviews also suggest that Anzac Day is, for the participants, similarly gendered and sexualised. The representation of sexuality in Anzac Day is not as immediately tied to familial provenance as race; this privilege is reintroduced in the analysis of the elasticity of the Anzac narrative and Australia—and tolerance of homosexuality within both—as is the way in which this feeds into the elasticity of law and tolerance of homosexuality within it.

In relation to law, it is perhaps interesting to note that, in all but one of the interviews, reflections on how the law was fed into the conversation about sexuality and Anzac featured only very briefly (and the other did not reflect on law at all). When it did feature, however, it was identified either as *part* of the process of fostering a more comfortable social environment or limited by social, political, and cultural conditions. Two participants, Zackary and Shawn, identified that, beyond the certainty of legal technicalities and decisions, questions of belonging, ‘fitting in’, and feeling comfortable with oneself and others needed to be accounted for. In much that same way that Prabhat reminds us that ‘a variety of positions on being, and becoming citizens, and on experiencing belonging, can be traced as part of a membership continuum’,<sup>41</sup> Zackary reflects on the meaning that exists beyond legal fact when talking about his Australian citizenship:

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<sup>40</sup> See also Wadham (2013).

<sup>41</sup> Prabhat (2018), p.124. See also Sutherland (2017).

Apologies for having an existential crisis here, but [laughing] I don't know what my identity is. Am I Australian? Am I still Australian? Was I *ever* Australian? What makes me that? I have a passport but, you know, what does that mean?

Of course, the decoupling of legal status from how one feels about one's identity is not necessarily an uncommon feeling, particularly as a gay man in a country widely perceived as being dependent on a robust, hyper-masculine, heteronormative ideal. What is particularly interesting is the directness with which Zackary links his feeling of unbelonging with Anzac: 'my family never went to, uh, any sort of parades, any, any, marches. Yes, I suppose sometimes I, I don't feel Australian.' The link between Anzac and the conceptualisation of Australian-ness is, unsurprisingly, a common theme across all seven interviews and while not all participants directly brought Anzac and sexuality into conversation, all seven identified their sexuality as conflicting with the "ideal", and archetypal, Australian identity.

Returning to the positioning of law within the interviews, the mediation of belonging beyond law is also accounted for. For instance, Owen, who recognises that his mother's inability to picture attending his wedding, should marriage equality happen,<sup>42</sup> is more significant than any legalisation with regards to his sense of happiness and belonging. Conversely, two other participants, Aaron and John, briefly identified the value of legal recognition for fostering more inclusive social and cultural attitudes, with John<sup>43</sup> recalling:

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<sup>42</sup> He recounts this conversation during the stages after coming out to his parents, and before marriage equality was legislated for in Australia.

<sup>43</sup> At 53, John was the oldest participant interviewed, and was in his early 20s in the period when male homosexuality was decriminalised in New South Wales and remained criminalised in Queensland.



New South Wales had Mardi Gras. Queensland you were beaten up and sent to prison by the police. Yeah, it certainly had a sense of safety that you never felt in Queensland, cos everything was illicit, and everything was underground, and you were cruising the weirdest places.

Even when accounting for the gay bashings, aggravated assaults, and murders in the more legislatively progressive New South Wales, John suggests that 'it still felt safer than Queensland, if that makes sense. But it did, it honestly felt safer because at least the police were on your side and, and you were, you were a legal entity.' Sandwiched between these two readings of law into participant accounts is the account of Ben, who identifies instances such as the (very) recent legalisation of gay marriage as an indication that '[Australia is] still such a backwards country.'<sup>44</sup> He situates this in the broader context of Australia's profound comfort in 'straight man, straight woman; that's it' and the conflation of male heterosexuality and masculinity. The issue of masculinity as a core theme within the interviews will be developed in further detail. Beyond this, the two other common themes identified across each interview are: the issue of representation of sexual and gender minorities in Australia (and Anzac), and the importance of certain, "typical", conduct for establishing comfort (of the self and others) with being an Australian homosexual. The latter of these is examined as a process of 'elasticity and tolerance'.

### *Representation*

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<sup>44</sup> This sentiment is also touched upon by Shawn, who states that 'we only got same sex marriage last year, um, well behind the rest of the Western World, shall we say.'

One of the most meaningful themes to participants, when talking about their experience of growing up in Australia, was the distinct lack of cultural and media depiction of homosexuality, whether it was in relation to sporting heroes or on television. The value of this was made clear by Owen, when recounting his frustration that Australian Olympic swimmer, Ian Thorpe, had publicly denied his homosexuality when competing:

We're the, we're the same age and it would have been really helpful I reckon, especially for me to feel more comfortable in my skin, as if someone like that, in a position of being an idol to the country, to actually come out during his peak, and say, he was gay.

Being able to positively identify that national idols can be, and are, gay is considered vital to a sense of belonging, self-value, and pride in one's country. For instance, Ben laments:

And none of their, you know, none of the people you remember or you, you know, in any of those—in Anzac day—or any of those days and people that teach you about heroes and all the people you learn about, like all the sporting people, like, there's... I don't think there's a single gay player in any sport in Australia at the moment. I mean, there is, but not that they've told anyone. So, I don't know. Yeah, it's still quite, yeah, one sexuality and that's it.

In other words, the equation is fairly straightforward; education and representation prefigure recognition. Throughout his interview, Ben talks through his understanding of war and Anzac through sport, so it is unsurprising that he relates the lack of awareness of gay men within the Anzac legend with a lack of current openly gay sportsmen. The lack

of awareness, growing up, of gay Anzacs who could be readily identified as such was also mentioned by Clark. While authors such as Yorick Smaal are making a concerted effort to reveal the realities of homosexuality within the services which are hitherto left concealed, poorly documented, and obliquely touched upon,<sup>45</sup> there is still a degree of reticence to acknowledge the full extent to which homosexuals are identified as serving (and thus, militarised, valorised, idolised).

This is, of course, one problem of grounding the ‘truth’ of Anzac Day, or any memory, in official records. In relation to WWI, this was the manifest objective of the official war correspondent, Charles Bean. The cultivation of this officialised version of Anzac history, which has since been recirculated in books, films, documentaries, television dramas, and educational resources, has built, for Australia, the ‘truest history which was ever written’<sup>46</sup> that just so happens to exclude homosexuality. This is because, should opportunities for homosexuals to meet others within the services, given the homosocial organisation of life in the services, be taken advantage of, they would have been officially forbidden from declaring themselves.<sup>47</sup> Informally, psychological or social explanations (ie illness or ‘deprivation homosexuality’) were given for known homosexuality and sexual acts between men within the services.

The even more definitive action of discharging men who were found to have engaged in sexual activities with other men ‘on medical grounds—with the reason not recorded—

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<sup>45</sup> Smaal (2015). See also Riseman, Robinson, & Willett (2018) for a collection of stories which confront the official, political, and cultural silencing of the service of LGBT personnel in the Australian Defence Force.

<sup>46</sup> Condé (2007), p.39, quoting Bean.

<sup>47</sup> Lake & Damousi (1995).

rather than charged or disciplinary action taken'<sup>48</sup> meant that homosexuality was kept absent from 'official records' and, thus, goes unmentioned in the canonical and foundational texts of the Anzac legend. Moreover, this lack of documentation of homosexuality among Australian service personnel was compounded by the policy, at various times in the history of the Australian forces, that 'disciplinary action would only be taken when the homosexual acts were in public, involved a sexual assault, involved a minor or if there was a power imbalance in rank.'<sup>49</sup> This means that the only homosexual acts which would publicly and officially be bound to the services are acts which would, in any other context, be met with moral and/or legal condemnation or judgment, thus providing a fundamental misrepresentation.

The litany of 'pop' and 'high' culture which deploy official historical accounts of Anzac Day, in order to structure their mnemonic narratives, only serves to entrench a particular truth. Within this mnemonic narrative, and the significance of Australian reverence of military heroism, it is problematic that LGBT history within the Anzac legend has been given negligible official recognition. It is problematic because bounded communities, determined in part by sensorial and affective quasi-legal institutions such as collective memory, can be the foundation of bigotry, violence, and fear against those that are unrecognisable<sup>50</sup> or non-identified.<sup>51</sup> It is certainly important to account for the work that needs to be done to make normative and formative quasi-legal institutions more representative and progressive, given the role they play in giving sense to belonging

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<sup>48</sup> Ford (1995), p.95. See Smaal & Willett (2015) and Riseman (2018) who suggest similar policies existed in WWII and the post-Vietnam era policy, respectively.

<sup>49</sup> Riseman (2018), p.152. See also Smaal & Willett (2015).

<sup>50</sup> See eg Butler (2009)

<sup>51</sup> See eg Ojakangas (2003).

within a legal and political community. That is not to say that some degree of progress is not perceived as being made. Aaron, for instance, suggests that:

And, especially like the Shrine of Remembrance, you know, the Australian War Memorial, all of that, they're starting to show there was diversity in the nation at the time. It wasn't just white, heterosexual men [ . . . ] now we've been able to chip away at this image of macho, macho butch heterosexual white Anzacs, and be able to go, some of them were gay.

Similarly, Clark identifies that there was an important shift from a silent population of homosexual servicemen who, while in uniform, were suppressing their sexuality:

To then, just as I was leaving, it wasn't just, oh my god, I've just been at a Dawn Service and I'm going to sneak into The Stonewall, but fuck it, you guys, all of you gays, we're going to the, we're going to The Stonewall, we're going to celebrate, and we're going to be acknowledged for the fact that it wasn't just straight people that were Anzacs, but also the gays that were Anzacs, as well. And we're gay, and we're military, and we respect our forebears.

This is, indeed, an important step and one which conforms to the linearity and ability to identify provenance expected of a collective mnemonic narrative. Notwithstanding this, there is still a lot of work to do, in relation to normalising the representation of homosexuality in the military.<sup>52</sup> Of course, some of the most vociferous rejection of gay

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<sup>52</sup> Riseman (2017).

representation from the military, and the rhetoric rationalising violent retaliation against homosexuality appearing within the RSL<sup>53</sup> and in legal judgment,<sup>54</sup> is not distant history. Furthermore, the deeply masculinist bent that military reverence takes means that the question of homosexual recognition also has to contend with the common stereotypical representation of homosexuals as effeminate or as over the top drag queens.<sup>55</sup> Indeed, the idealisation of masculinity as a fundamentally Australian trait to be revered was highlighted as a core challenge to participants when growing up.

### *Masculinity*

‘The Australian male is a very macho beast.’ So summarises John. It is a depiction of Australian manhood which each of my interviewees identified. Beyond this, though, effeminacy was considered to rank, according to Zackary, ‘in the hierarchy, far less than masculinity.’ The essentialised distinction between effeminacy and masculinity—overlaid with the distinction between homo- and hetero-sexual, respectively—as well as the identification of typically masculine attitudes, activities, and characteristics are key features of each interview. The pervasiveness of masculinity across a number of cultural performances is exemplified by Zackary, who uses Australian expressions and typical manners of speaking to bind his reflections on the interaction between the foundations of Australian culture, Australian values, sexuality, and gender stereotypes. He suggests that one culturally significant ‘value’ within Australia is the prevalence of ‘tall poppy syndrome’, or the derogation of high achievers as ‘assholes’ and ‘smart asses’ (‘they all

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<sup>53</sup> Nicoll (2001).

<sup>54</sup> Philadelphoff-Puren & Rush (2003).

<sup>55</sup> Two participants in particular, Zackary and Shawn, mention growing up with only *The Adventures of Priscilla, Queen of the Desert* as a reference for how homosexuals were characterised.

kind of yeah, tear each other down, you know, in a joking way. And make fun of people who are, I don't know? I'd say better or, or they, they see as better').<sup>56</sup>

The reflection on tall poppy syndrome is an important feature of Zackary's story as he goes on to link this with the experience of growing up in Australia as a gay man, and the conflation of gender stereotypes and caricatures of sexuality:

Um, at least, yeah, when I, when I was a, a kid, you know, growing up as a teenager, they would be really slim, effeminate, limp wristed, talk with a lisp, you know, or, or something. Or talk in a really prissy uh, you know. Even a British accent sometimes. I think for some reason they're all, they all sound really British. I, sorry, I, I, I'd [laughing] I've, I hope that's not offensive.

The caution against me, as a Brit, taking offence at the link being made between a British accent and the suggestion of homosexuality is, itself, an intriguing statement to make as it suggests that any implication of effeminacy is something to take offence at. Zackary goes on to explain that:

I think, I think for a lot of gay guys, it's, it's, it's an, it's a way of I don't know? Being more precise? Maybe they have a more precise way of speaking and that's closer to British than Australian? Because it's you know what Australian ways of speaking are typically- everything's slurred, lazy, drawn out. Does that make sense? [...] I think we'd make fun of people that sounded that way. Possibly

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<sup>56</sup> This is an insight shared by Clark, who suggests that 'cutting each other, making those terrible, terrible remarks [...] was my upbringing on my father's side.'

because they sound gay, possibly because they sound like they're being posh, better than they are.

The desire not to be seen as posh or elitist is related to the tendency for Australians to back the underdog, and Zackary also relates it back to jokes about the country's convict past and—on reflection—also speculatively back to the unsuccessful Gallipoli. At this point, the entanglement of Australian cultural values and perceptions of how one's sexuality may fit within this configuration begins to emerge. The speculative rooting of Australian linguistic norms in Anzac Day, alongside the principles of egalitarianism and tall poppy syndrome, sees sexuality characterised for judgment, in Zackary's opinion, alongside elitism. The tying together of the masculine ideal and Anzac Day is articulated more directly by several other participants. Aaron suggests that homosexuality, as a minority grouping within Australia, was possibly the hardest for people to accept, 'specially with Anzacs, because the, the diggers were, for so long, represented and portrayed as macho, macho, butch guys.' The common trope of associating masculinity with heterosexuality is unhesitatingly read into the armed forces. Furthermore, Owen, mentions that the Anzacs were archetypal Australians, in that they were:

Kind of like your every, everyday Australian, kind of like the larrikin, easy-going, no-worries kind of people. Uh, really good blokes. And that's, uh, and is probably the term bloke is ridiculously [laughs] heterosexual. I'll probably say actually, because it is supposed to be, like it is very masculine, like uh, um, you know, blokey-blokey kind of, all the guys down at the pub after playing a game of footy, or kind of, uh, who does embody that.



In comparable terms, a link between the services and masculinity is made by Clark, who suggests that his decision to join the cadets ‘would actually help to make [him] a mature adult [ . . . ] and also in terms of what would make [him] a man’ reinforces the idea of the serviceman as the archetypal, masculine, man. This archetype is readily translatable into a repeatable commemorative narrative which acts as an apparatus or condition which rationalises what being a man, and normatively masculine, means.<sup>57</sup> The fact that the armed forces are so readily commemorated as the source of national pride or character is deeply problematic because the Australian narrative of war is saturated with the virtue of the hyper-masculine and heroic soldier.<sup>58</sup>

Moreover, as Carmel Shute argues, WWI affirmed the traditional sexual stereotypes of men, and that the extolling of ‘the “manly” virtues of the soldier, as opposed to the “weakness”, “cowardice” and effeminacy” of the stay-at-home “shirker”, was a frequently used vehicle for psychological manipulation of men’<sup>59</sup> into war. Furthermore, the lack of education at the time on sexuality in general, not to mention homosexuality, meant that sex and gender could often be conflated, as were maleness or masculinity.<sup>60</sup> While this may not have, *originally*, equated to the deliberate heteronormalizing of a commemorative narrative, the Anzac Day commemorative tone was—and continues to be—defiantly male, straight, and masculine.

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<sup>57</sup> Connell & Messerschmidt (2005).

<sup>58</sup> Damousi & Lake (1995). See also Thomson (1989); Lake (1992); Riseman (2018).

<sup>59</sup> Shute (1995), p.27.

<sup>60</sup> Wotherspoon (1995).

When asked to clarify the characteristics of the hero being valorised in Australia, Ben brings the effects of the above narrative on the everyday inclinations of Australians into view, which he links to both the armed forces and to sport:

Yeah, well, it's very... It's very much, I guess, kind of, alpha male, going out there and winning at whatever he's doing or [laughs] killing people [ . . . ] Growing up, most of our bogans are all the ones with huge muscles trying to beat people up and it's all ridiculous and you look at it and you think, they're idiots but everyone really wants to be that person, I guess, don't they? [ . . . ] They, you know. I've seen a couple of the rugby league players at the local bar in Brisbane and they're always hitting people and being idiots and then you, like, watch them on tv and you're like, oh, I love you. So, it's all a bit stupid but, you know, that's what we love, so.

Of course, this quote suggests a masculinist challenge to the law, not least in terms of the veneration of those committing acts of violence as the larrikin, boorish but respected. It takes on an added layer in relation to the substantive sense of belonging and comfort beyond formalised sexual equalities when the macho disposition is considered the reason for homophobia. When asked why people think so disparagingly of homosexuality in Australia, and where that might come from, John suggests that 'everyone knows a gay person, whether they uh, uh, know it, and at this stage, knows an out gay person. So that's not, I don't think [ignorance] today would be a reason for the gay bashings, except, except for that Australian macho thing.'

*Elasticity and tolerance*

Staying with John, and in the context of a masculinist challenge to law, I'd like to return to an observation he previously made, about feeling safer because the police were on his side in New South Wales. As important as the police were, being symbolic of the legal protection offered, was John's own robustness:

They all were [homophobic killings], and we knew they were, and you would still go there [to a cruising stretch between Bondi and Tamarama], but I, I was enormous, so I was never really worried. It was, it still felt safer than Queensland, if that makes sense. But it did, it honestly felt safer because at least the police were on your side and, and you were, you were a legal entity.

His ability to satisfy a particular norm (of size and muscularity) within the masculinist idea was a source of comfort and safety. While this fits within the familiar truism that persecution, intimidation, and aggression is often reserved for people perceived to be weaker, it does also suggest that a *depiction* of strength and 'macho, macho, butch' is a condition of protection. This speaks, provisionally, to the elastic quality of identity norms. In other words, it speaks to the notion that identity norms are, broadly, demanding of consistency or uniformity but tolerant of diversity which can still be captured and rationalised as belonging within the paradigmatic identity logics. This follows Vanessa May's suggestion that belonging is, to some degree, a matter of conducting oneself in an acceptable manner before others.<sup>61</sup> The importance of appearing as, crudely, the 'right sort of gay man' or as a comparably reasonable 'level' of gay by adopting a masculine

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<sup>61</sup> May (2011).

aesthetic<sup>62</sup> demonstrates that belonging is contingent on a perception that certain characteristics need to be conformed to in order to be tolerated.

What emerges from each of the interviews, in one way or another, is exactly this. Each participant places importance on satisfying elements of the perceived masculine standard, not least because they associate identifying with their sexuality with the social association of homosexuality and undesirable effeminacy. This idea of 'doing masculinity'<sup>63</sup> accords with instances of cultural representations of homosexuality being negotiated and sanitised so as to avoid disaffecting heterosexual men.<sup>64</sup> For instance, Zackary reflected on the pride he felt over certain comments about his sexuality:

A common one I would hear from people was, I'm glad you're not an obvious gay, you know? It's not necessarily a, something to be proud of, but I was, at the same time. [...] Does that make sense [laughing]? As if it's, um, something to be prized. Masculinity is something to be prized. Does that make sense? So, I should be proud of myself. I'm the right sort of gay man. So yeah, actually growing up I made a concerted effort, and partly subconscious I'm sure, to be the opposite of the, the common stereotype.

If the desire to make himself more socially acceptable, or others more comfortable with him, was Zackary's aim, Clark's concern was much more a matter of family acceptance.

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<sup>62</sup> Bridges (2014). Tristan Bridges is, here, writing in the context of heterosexual men problematically co-opting 'gay aesthetics' as a means of dissociating themselves from the masculine stereotype. However, the notion of reliance on aesthetics 'to identify the seeds of belonging' (p.66) productively ties appearance, the satisfaction of social patterns and norms, and belonging together.

<sup>63</sup> See eg Kazyak (2012).

<sup>64</sup> Bollen, Kiernander, & Parr (2008).

He would regularly recount the importance of masculinity within the family and it is instructive that he would say, in relation to the present, 'now, on the other end, I'm like, yeah, I'm a little bit more athletic, and [my sexuality] doesn't matter.' Such undertakings can be considered 'compensatory manhood acts'<sup>65</sup> which enable people to emphasise 'masculine' traits and satisfy elements of hegemonic or normalised masculinity. Owen, for instance 'did the whole cliché' of coming out as bisexual so it was 'not such a rude shock' to others who could still associate with him as 'half-gay'.

This act of concealing sexuality in order to pass as heterosexual, be more accepted within friendship groups and family, or as a sense of necessity for safety in a heterosexist climate each imply 'a normative formation which makes homosexuality more acceptable vis à vis heteronormative society.'<sup>66</sup> João Manuel de Oliveira, Carlos Gonçalves Costa, and Conceição Nogueira suggest that strategizing to pass oneself off as straight is one aspect of homonormativity, but that it also depends on an uncritical acceptance of the neoliberal 'postgay' paradigm and a desire to be included within heterosexist institutions. This is what Lisa Duggan terms, the *new homonormativity*, which depends on understanding neoliberalism as a non-politics but is, all the same, 'a politics that does not contest dominant heteronormative assumptions and institutions but upholds and sustains them while promising the possibility of a demobilized gay constituency and a privatized, depoliticized gay culture anchored in domesticity and consumption.'<sup>67</sup>

While the interviewees in this study are not necessarily, deliberately engaging this depoliticisation of homosexuality directly, many do tie social progress to the institution

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<sup>65</sup> Sumerau (2012).

<sup>66</sup> Oliveira, Costa, & Nogueira (2013), p.1478.

<sup>67</sup> Duggan (2002), p.179.

of marriage equality, identifying the time it took to establish this equality in law as an example of how 'backwards' Australia is. Duggan's notion that homonormative 'equality' is coded as 'narrow, formal access to a few conservatizing institutions'<sup>68</sup> is instructive here. In relation to marriage, this equality is problematic because the law is fed into the process making some formulations of non-heteronormative relationships respectable and recognisable.<sup>69</sup> Indeed, 'while legislation against homophobia, the adoption of non-discrimination clauses, and the extension of marriage rights have produced official "equalities" landscapes for sexual minorities . . . these forms of sexual legitimation have been socially and spatially uneven.'<sup>70</sup>

Here, the role of Anzac Day, and the militarisation of Australian-ness, can be reintroduced as a quasi-legal institution which helps create those undulations in the legal landscape. The allowance for gay servicepeople, as a fillip of the non-politics of homonormativity,<sup>71</sup> means that the presencing of homosexuals within the Anzac legend can begin to happen, slowly.<sup>72</sup> However, the idea that greater recognition of homosexuality can be achieved through Anzac presumes that militarised recognition is fundamentally positive and progressive. Or, more seriously, that the recognition of homosexuality is mediated by militarism, to the degree that militarism is proving there are macho homosexuals, not that homosexuality is fundamentally accepted: as Aaron says, 'obviously, armed forces being macho, macho, butchy guys, they don't want to have some queen running and going, yeah -funny. But not all of them are.'

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<sup>68</sup> Duggan (2002), p.190.

<sup>69</sup> Ammaturo (2014).

<sup>70</sup> Podmore (2013), p.263.

<sup>71</sup> Duggan (2002), p.189.

<sup>72</sup> See, for instance, Aaron's comments in relation to this: 'they've had to do it slowly, because if they'd just gone, bang, there were gays, there would have been an absolute uproar and people, you know, and people would have been like, no, there were no gays, no, no, none, no, no, none.'

The recognition of the value of homosexuals who are also archetypal patriots in the protection of—and in the case of Anzac Day, the conception of—the nation is on the basis of their generativity and ability to fit the rationalised conceptualisation of ‘the nation as a growing child . . . used to invoke the logic of progress and development.’<sup>73</sup> Narratives which exist outside of the progression of drawing out lessons from an identifiable point of origin exist outside the constructed rationality of the commemorative narrative. This is comparable to the acceptability of gay marriage as an inculcation of heteronormativity on non-straight relationships as it presupposes the ‘normative image of genetically related families in which two parents in “loving relationships” raise children.’<sup>74</sup> This is one thing Shawn mentions, when rationalising his sister’s eventual acceptance of his homosexuality: ‘if I want kids, I can still have kids. It’s just a different way I’ve got to go about it.’

As Damien Riggs and Clemence Due identify, the privileging of this image is racially normative.<sup>75</sup> Moreover, the marriage debate diverts attention from:

the existence of broader and more complex underlying political issues, such as entanglements of policies touching on race, class and choice . . . [meaning] the advantages of same-sex marriage are tangible for middle and upper classes who already enjoy some forms of economic security.<sup>76</sup>

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<sup>73</sup> Taylor & Wetherell (1999), p.45.

<sup>74</sup> Riggs & Due (2013), p.102.

<sup>75</sup> Riggs & Due (2013).

<sup>76</sup> Ammaturo (2014), p.182.

The ideal of the militarised, masculine norm within Anzac Day, to which the right sort of homosexual can be admitted, is also racialised, where ‘the production of (certain homonormative, liberal) queers as being “closer” to the nation than other subjects, both queer and non-queer’ is ‘most obviously demonstrated by the inclusion of gays and lesbians in the reproductive futurism of marriage, or the acceptance of LGB people in the army.’<sup>77</sup> The racialised texture of this is directly referenced by Clark, who introduces the typification of the Anzac as ‘a mousy-brown-haired, blue-eyes, white-skinned male.’ The elasticity—ie the degree of tolerance—of the legal and political order to recognise difference is, as such, tempered by legal provisions (eg marriage equality) and quasi-legal institutions (eg the commemoration of the Anzacs) which recognise certain forms of homosexuality, so long as they conform to normative ideas of kinship, family, desire for reproduction, and ‘full’ economic life.<sup>78</sup>

As such, marriage equality, and the inclusion of certain impressions of valued non-heteronormativity is a homonormative *fait accompli* which is buttressed by quasi-legal institutions that also present similarly valued traits to be conformed to in exchange for recognition and belonging within an ostensibly progressive society. This progressive agenda of the ‘postgay’ era, which is more accurately an era of tolerating sexual minorities who conform as much as possible to the social order,<sup>79</sup> nurtures ‘yet another binary where difference and normalization are, once again, implemented and reproduced.’<sup>80</sup> The tranquilising effect of the complicit legal and quasi-legal orders on political engagement

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<sup>77</sup> Raboin (2017), p.674.

<sup>78</sup> Petersen & Myong (2015).

<sup>79</sup> See Mathers, Sumerau, & Cragun (2018).

<sup>80</sup> Oliveira, Costa, & Nogueira (2013), p.1488.



is articulated starkly by Duggan: ‘we have been administered a kind of political sedative—we get marriage and the military and then we go home and cook dinner, forever.’<sup>81</sup>

## Conclusion

The dynamism of senses of belonging reinforces the importance of acknowledging that law interacts with a plurality of competing and complementary social and ideological systems.<sup>82</sup> Indeed, the operability of statutes within a legal community which appear progressive encounter, are challenged by, and take on particular meanings as a result of the involvement of other apparatuses which function ‘as a symbolic mark of distinction of groups that are not included within a community.’<sup>83</sup> The central argument of this paper has been that we must pay due attention to the affective foundations of law, which includes the normalising and formalising quality of commemorative narratives, helping to demarcate the boundaries of belonging and unbelonging, particularly in relation to homosexuality in Australia.

Indeed, we should be cognisant of the fact that, ‘while the discourse of law *can* serve, and serve well, to redress social injustices and subjects of legal discourse are savvy and capable of negotiating legal systems even as they are subject to their disciplinary forces, [we should] destabilise the measuring of social change and of “progress” in terms of legalisation.’<sup>84</sup> For instance, Shawn identified the unequivocal value of marriage reform as an example of ‘Australia [being] more forward-thinking than [he] was beginning to think’. However, this ostensibly progressive moment cannot necessarily be tied with

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<sup>81</sup> Duggan (2002), p.189.

<sup>82</sup> Davies (2005).

<sup>83</sup> Christensen (2009), p.27.

<sup>84</sup> Puar (2013), pp.23–24. Emphasis added.

actual social progress. As Duggan warns, passing the politics of sexual difference through the prism of legal equality stifles an expansive and critical queer politics. Shawn himself reflects this point when he intimates that familial acceptance of his sexuality may well be tied to him preserving the generative norm and his ability to still satisfy the ‘typically nuclear family idea’, married with children. Moreover, the above analysis suggests that the uncritical assumption of progress in formal equality can readily be mobilised within sexually exceptionalist and nationalistic politics.<sup>85</sup>

Rather than necessarily depending on law to supersede a problematic legal and political climate, alternative frames of normativity beyond official legal frameworks can *potentially* offer an emancipatory space ‘in which one can experiment with and engage in, at least to a degree, social relations free from the grip of legality’<sup>86</sup> as law cannot be relied upon as an adequate means of resistance. If a normative claim is to be made here, it is that a truly progressive agenda must be allied with contesting the narratives and values which derive from quasi-legal institutions such as collective commemorative events. In the context of Anzac Day, this means challenging the conflation of homosexuality with the transgression of the masculine and militaristic foundations of Australian values.

## **Ethics**

Ethical approval for this project was granted by the OU Human Research Ethics Committee and the BSA ethics guidelines were followed throughout.

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